

## Message Text

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ORIGIN EA-12

INFO OCT-01 L-03 ISO-00 SEC-01 JUSE-00 COME-00 H-01  
/018 R

DRAFTED BY EA/K:RGRICH,JR.:JCM  
APPROVED BY EA/K:RGRICH,JR.  
L/EA - MRS. VERVILLE  
-----045814 251008Z /21  
R 242159Z AUG 77  
FM SECSTATE WASHDC  
TO AMEMBASSY SEOUL

C O N F I D E N T I A L STATE 202317

E.O. 11652: GDS

TAGS: PDIP, US, KS

SUBJECT: ROK PROTEST OF TELEPHONE RECORD SUBPOENAS

REF: SEOUL 7087

1. ROK EMBASSY POLITICAL COUNSELOR YU CAME TO DEPT  
AUGUST 23 TO REGISTER SIMILAR PROTEST REGARDING SEC  
SUBPOENA OF EMBASSY TELEPHONE RECORDS AS FOREIGN MINISTRY  
MADE TO EMBASSY SEOUL (REFTEL).

2. DEPT INFORMED YU THAT WE HAVE RECENTLY REVIEWED OUR  
LEGAL INTERPRETATION OF VIENNA CONVENTION IMMUNITIES IN  
CONNECTION WITH ROKG PROTESTS, BUT THAT OUR INTERPRETATION  
REMAINS CLEAR THAT VIENNA CONVENTION IMMUNITIES DO NOT  
EXTEND TO NORMAL BUSINESS RECORDS OF PRIVATE ENTITIES  
SUCH AS BANKS AND PHONE COMPANY EVEN THOUGH THE RECORDS  
INVOLVE A DIPLOMATIC MISSION. YU REPEATED THE ROKG  
INTERPRETATION THAT SUCH RECORDS WERE PROTECTED UNDER THE  
VIENNA CONVENTION AND FURTHER NOTED THAT THE ROKG BELIEVED  
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THE FREEDOM OF COMMUNICATION PROVIDED FOR IN THE  
CONVENTION WAS INFRINGED BY THE SUBPOENA OF TELEPHONE  
RECORDS.

3. IN VIEW OF LENGTHY AIDE MEMOIRE DELIVERED TO EMBASSY  
SEOUL LAST WEEK BY ROKG IN CONNECTION WITH BANK RECORD  
SUBPOENAS (SEOUL 7002), WE INQUIRED OF YU WHETHER ROKG

NOW DESIRED USG TO CONVEY A WRITTEN STATEMENT OF OUR POSITION. AS HAD BEEN THE CASE ON AN EARLIER OCCASION, HOWEVER, YU DEMURRED AT THE SUGGESTION THAT WE CONVEY OUR LEGAL INTERPRETATION FORMALLY IN WRITING.

4. YU POINTEDLY NOTED THAT ROKG EARLY THIS YEAR HAD RATIFIED THE VIENNA CONVENTION OPTIONAL PROTOCOL CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES, AND HE STATED THAT THE ESCALATING SERIES OF SUBPOENAS WERE RAPIDLY REDUCING THE ARENA FOR AMICABLE ACCOMMODATION BY THE ROKG, THUS LEAVING AN IMPORTANT QUESTION OF PRINCIPLE TO BE DECIDED. HE ALLEGED THAT CONTINUING SUBPEONAS DEFINITELY SEEMED TO ROKG TO BE UNFRIENDLY ACT BY USG.

5. WE ONCE MORE EXPLAINED THAT THESE SUBPOENAS DO NOT REFLECT ANY USG POLICY TO HARASS ROK BUT ARE PART OF ONGOING USG INVESTIGATIONS WITH WHICH THE STATE DEPARTMENT MUST COOPERATE. WE URGED THAT MAXIMUM COOPERATION BE AFFORDED BY THE ROKG TO SUCH INVESTIGATIONS.

6. COMMENT: THE PATIENCE AND UNDERSTANDING OF THE ROKG CONCERNING THE CONTINUING SERIES OF BROAD SUBPOENAS OF EMBASSY-RELATED RECORDS IS OBVIOUSLY WEARING THIN. WE HOPE TO CONTINUE TO PERSUADE THEM OF THE IMPORTANCE OF BEING AS FORTHCOMING AS POSSIBLE. HOWEVER, A CLEAR CONFIDENTIAL

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DIFFERENCE OF OPINION BETWEEN OUR GOVERNMENTS DOES EXIST ON THE LIMITS OF DIPLOMATIC IMMUNITY PROVIDED FOR BY THE VIENNA CONVENTION, AND THE ROKG MAY YET DECIDE TO TEST OUR INTERPRETATION THROUGH THE DISPUTE SETTLEMENT MECHANISM OF THE PROTOCOL TO THE CONVENTION, I.E. BY MAKING APPLICATION TO THE ICJ. WE DO NOT INTEND TO ADVISE THEM ONE WAY OR THE OTHER ON THIS, SINCE IT IS CLEARLY THEIR RIGHT TO DO SO IF THEY WISH. CHRISTOPHER

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NNN

## Message Attributes

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**Channel Indicators:** n/a  
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**Disposition Approved on Date:**  
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**Disposition Date:** 22 May 2009  
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**Executive Order:** GS  
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**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009